Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and Standards for Unbundled Network Elements and Interconnection	)))	CC Docket No. 01-318
	)	
Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance	))))	CC Docket No. 98-56
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	))	CC Docket No. 98-147
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling	)))	CC Docket Nos. 98-147, 96-98, 98-141

COMMENTS OF
ADELPHIA BUSINESS SOLUTIONS, INC.

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EXECUTIVE SUMMARY

Adelphia Business Solutions, Inc. and its subsidiaries (“Adelphia”) provide facilities-based telecommunications services throughout the United States. It has interconnection agreements with each of the Regional Bell Operating Companies (“RBOCs”) and other incumbent local exchange carriers (collectively “ILECs”) and provisions unbundled network elements (“UNEs”) from the ILECs primarily for the “last mile” network.

Adelphia has experienced an increasing number of issues with delays and impediments in obtaining UNEs on a “predictable, reliable and timely” basis from the ILECs. As fellow CLECs have exited markets due to economic pressures, Adelphia has found that the ILECs in an increasing number of instances are not providing Firm Order Commitment (“FOCs”) in a timely manner, are not meeting the FOC dates without proper notification, are slow to resolve billing errors, and provide inferior facilities that are prone to interruption and static, and when called upon to repair the facilities, do not resolve the problem but close trouble tickets anyway. From Adelphia’s perspective, it seems that the ILECs are using these delays to take advantage of what they perceive as a golden opportunity to minimize, or eliminate outright, meaningful competition. It also seems that, in the current environment, the ILECs believe that they can act with impunity, and that if, in fact, the Commission or other regulatory body takes any action at all against them, the cost of such action will be insignificant enough for the ILECs to shrug it off as merely a “cost of doing business.”

The development of a competitive telecommunications market clearly is at a crossroads. If competition among telecommunications service providers is going to continue to exist, it is nothing short of necessary for the Commission to actively, decisively try to ensure that CLECs can obtain UNEs in a reasonable business manner, free from or at least protected against the endless varieties of delay tactics that the ILECs have employed. Adelphia urges the Commission to adopt performance measures and standards along with a multi-tiered enforcement methodology to ensure ILEC compliance with the metrics. Based on its review of the WorldCom proposed metrics, which should be submitted to the Commission as part of this proceeding, Adelphia endorses the adoption of these metrics as a base for the performance measures and standards. Adelphia supports the imposition of metrics to provide to the Commission and other state commissions the ability to resolve service issues and foster competition between local exchange carriers.

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Adelphia Business Solutions, Inc. and its subsidiaries ("Adelphia") hereby submit these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

I. INTRODUCTION

Adelphia, through its operating subsidiaries, provides integrated local exchange services and other telecommunications services in selected markets throughout the United States. Adelphia primarily uses high-capacity loops (*i.e*. DS1 and DS3 loops)

[1] *Performance Measurements and Standards for Unbundled Network Elements and Interconnection,* Notice of Proposed Rulemaking, CC Docket No. 01-318, (rel. November 19, 2001)

to provision services to its customers. In addition, Adelphia recently has begun utilizing the enhanced extended loops ("EELs") to provision service to customers that are served by central offices where Adelphia has no collocation arrangement.

Adelphia relies on the "last mile" network of the incumbent to serve a number of its customers. Adelphia must manage its customer expectations as to when the service will be delivered and provide similar or better quality service than the customer's previous provider. When that previous provider is the ILEC, and the ILEC has the means to undermine Adelphia's timely delivery and the quality of services, the ILEC must be held accountable for its performance and be penalized by failing to meet such standards. Without "[p]redictable, consistent, adequate underlying wholesale service quality"[2] from the ILEC, CLECs will be unable to truly compete with the ILECs for customers within a market. Accordingly, Adelphia submits that FCC must adopt a number of performance measurements and standards along with a multi-tiered escalating enforcement methodology for ILEC noncompliance to ensure that competition in local exchange services is fostered and maintained.

II. DISCUSSION

A. The FCC should adopt performance measures and standards along with penalties for ILEC noncompliance.

There can be no doubt that ILEC provisioning of UNEs is characterized by delay, poor quality, and discrimination. Adoption of measurements and standards for UNEs would undoubtedly assist the Commission in ensuring that these services are provisioned

[2] "Predictable, consistent, adequate underlying wholesale service quality is therefore crucial to the development of a truly competitive telecommunications industry." *Comments of the Minnesota Department of Commerce*, CC Docket No. 01-318, *et.al.,* dated December 28, 2001, p. 2.

in a just and reasonable manner. Without such measures, it is simply too hard for CLECs to prove they are receiving inadequate provisioning, too easy for an ILEC to deny that it is provisioning UNEs in an unjust and unreasonable manner, and too easy for regulators to avoid imposing penalties on ILECs for unjust and unreasonable provisioning based on lack of sanctioned provisioning standards and an inability to obtain the necessary evidence.

Adelphia attempts to work with the ILECs on a business-to-business basis, and tries to resolve issues surrounding provisioning and ordering issues, billing issues, and maintenance and repair issues between the companies without resort to external sources, such as state commissions or the FCC. With the downturn in the market and the exit of many CLECs in the past several months from a number of service areas, Adelphia has found that the ILECs have increased the impediments and delays in provisioning orders, are slow to resolve billings errors (but are quick to seek deposits for alleged failures of untimely payments which relate back to the billing errors), and provide facilities which are subject to constant interruptions of service and interference on the lines and, when called upon to repair or replace, do not resolve the issue.

Adelphia has found that it must resort to seeking the assistance of the regulators for resolution of these issues in order for the ILECs to respond. Without measures and standards with corresponding penalties, the FCC and the state regulators may be unable to provide adequate assistance to Adelphia and similarly-situated CLECs. Adelphia fears that the ILECs will become increasingly more aggressive if the FCC does not impose some oversight over the process.

B. The FCC should clarify when an ILEC may decline to provide UNE based on "no facilities" reason.

Adelphia also takes this opportunity to ask that the Commission take steps in this proceeding to require changes in ILEC practices in which orders are rejected for DS1 UNEs based on "no facilities" available. In the past year, Adelphia has seen the rejection of its DS1 UNE orders increasing by a significant percentage based on a reason of "no facilities." When an order is rejected, Adelphia has no recourse but to issue an order for Special Access facilities, which are far more expensive and have a more restrictive standard of use when converting such facilities to UNE pricing, when available.[3] Additionally, the customer's due date may be delayed because of the lag time between the rejection of the UNE order, and the resubmission of an order through the Special Access procedures.

The ILECs appear to rest these rejections on the basis that they do not have to install or construct facilities to provide UNEs to the CLEC. However, Adelphia has found that even though its UNE order is rejected for "no facilities," the subsequent Special Access order is accepted and, generally, the delivery date does not reflect that any significant installation or construction was required. Adelphia requests that the Commission clarify the requirements of when ILECs may, if ever, decline to prove loops on the grounds that no facilities are available, and impose an obligation to require the ILEC to convert the Special Access "loop" to UNE pricing upon request by the CLEC.

[3] Although the FCC has explicitly stated that the ILECs must convert Special Access circuits to EELs under limited circumstances, the FCC has not made clear that if a CLEC has been forced to order a Special Access Local Channel, that the ILEC is required to convert the local channel to a UNE loop.

C. The FCC should adopt the WorldCom metric proposal as a base for the measures and standards.

In order to ensure non-discriminatory access to UNEs, Adelphia strongly endorses the concept of specific measurable metrics for performance. Many of the CLECs in this proceeding have been discussing and exchanging proposals as to what specific metrics we would like to have adopted. Adelphia understands that MCIWorldCom will be providing a thorough proposal with specific metrics, methods of calculation and business rules (the "Worldcom Proposal"). Adelphia endorses the Worldcom Proposal in its entirety as a starting point for adoption of metrics. Adelphia, however offers its experiences in ordering, provisioning and maintaining UNEs which lead us to further articulate certain issues and metrics which would ensure that Adelphia's specific issues are being addressed. Many, if not all, of these metrics match either those set forth in the New York Performance Assurance Plan ("NY PAP") or in the Worldcom Proposal, which is why Adelphia supports those metrics. However, the metrics discussed below are of special significance to Adelphia, as they most closely mesh with the issues it has been facing.

D. Specific Metrics that are of importance to Adelphia.

1. Ordering Metrics

a. Order Completion Timeliness

While this specific metric comes from the NY PAP (Metric OR-1, which Adelphia endorses), Adelphia refers to this more generically in relation to the issues it has seen with several ILECs. Simply ensuring that Firm Order Commitments ("FOCs")[4]

[4] The definition of "FOC" is also problematic in that a number of ILECs see a FOC merely as a mechanism to demonstrate that the order has been received, and that the delivery date returned is not a "firm" date but

are received in a timely manner is an issue.[5] This issue is universal with all ILECs Adelphia has been working with, and makes it extremely difficult for Adelphia to even give its customers reasonable estimates on installation intervals. In addition and related to this issue would be metrics measuring the process taken to complete an order within the ILEC.

Currently, as all parties are well aware, orders for UNEs go through either or both mechanized and manual processes within the ILEC, depending on the specific need. With this mixed process, the need for measurement of time intervals and accuracy is apparent.[6] Adelphia's position is that mechanized flow through needs to be maximized, with a metric showing this. In addition the time intervals discussed above would help to both promote maximizing use of mechanized systems and ensuring that any manual processes used are efficient and timely.

The measurements that need to be tracked to ensure non-discriminatory access would be as follows:

Timeliness in issuing FOCs;
Timeliness in issuing rejections (to the initial order);
Amount of orders flow through entirely via a mechanical process; and
Timeliness of orders flowed through with some portion of a manual process.

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merely a "place marker." Adelphia urges the FCC to clarify that the FOC must be an "actual" date which the ILEC will meet rather than a variable date that the ILEC may change at will.

5 In one instance, Adelphia did not receive a FOC from the ILEC until twenty-one (21) days after the order had been submitted, with no intervening communications from that ILEC.

6 Adelphia has full knowledge of these issues, as it actually had customers disconnected in Illinois due to problems encountered in a mixed mechanized / manual flow through process (*see letters from Adelphia to SBC of September 7, 2001 and November 19, 2001, copied to Dorothy Atwood and Michelle Carey*). While Adelphia and SBC worked through the issues presented in that situation, it enforces Adelphia's position that this process needs to have metrics attached to it.

b. Jeopardy Notification Use and Intervals

Adelphia's comments surrounding issuance of jeopardy notices lie on two fronts. One, that often jeopardy notification are not issued, rather the ILEC will simply miss the FOC date or issue a new FOC date, without issuing any jeopardy notifications; and two, if and when notice is given, it is often not a timely notice. As with the other ordering issues discussed above, Adelphia cannot reliably predict when it will be able to provide service to a given customer because of the ILECs' penchant for missing FOC dates without explanation, pushing FOC dates back and untimely jeopardy notifications, when jeopardy notifications are given at all.

A metric Adelphia would point to from the NY PAP which would help in this area is PR-7, "percent of jeopardy circuits." The goals of metrics in this area should be:

(1) That ILECs inform CLECs promptly when FOC dates will be missed, using the jeopardy process;
(2) that jeopardy notices are sent as far in advance of the FOC as possible; and
(3) that, to the maximum extent possible, FOC dates are not missed, but are accurate when initially issued.

In order to accomplish these goals, Adelphia recommends that the following measurements need to be tracked:

Percent initial FOC dates missed;
Jeopardy interval (in comparison to the FOC date); and
Percent jeopardy notices sent when FOC dates not met.

By examining these measurements, it will be possible to begin determining how a given ILEC is meeting the dates given on its FOCs and how it chooses to notify CLECs when the date is not going to be met. Again, the overarching goal here is predictability, which is one manner of ensuring non-discriminatory access to UNEs.

2. Provisioning Metrics

a. On Time Performance

While on its face, this would seem to relate back to ordering issues, there is a specific aspect that is a provisioning issue. This arises most often when converting customers from a total service resale ("TSR") environment to a UNE / combination of UNEs and Adelphia facilities environment. Again, the recurring theme here is one of predictability. When Adelphia is prepared to cut services over to its facilities / UNEs at a given time, the ILEC must be consistent with that time as well. To track this, Adelphia would suggest measuring the percentage of orders which are delivered within a given interval of time surrounding the agreed to time and date. It is important to note here that being significantly early is also troubling here. If Adelphia is not prepared to convert the customer, the customer will lose service. Thus, the need for true predictability is apparent.

b. Installation Quality

An issue relating directly to the requirement that the UNEs be provided at parity with the ILECs' retail operations is that of installation quality (also relating to the "Hot Cut Loop" metric, PR-9 in the NY PAP). Adelphia has been experiencing several problems with the quality of recently installed UNEs. These problems have resulted in new or newly converted Adelphia customers losing their service for some period of time in several situations. Adelphia supports the comments expressed in the NPRM Notice and further comments that this issue cannot be stressed more highly.[7] The quality of a customer's service is most important directly following installation. Therefore, a metric

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[7] NPRM, ¶¶55-58.

showing the frequency of trouble tickets generated soon after a UNE installation as compared to a special access installation would truly show the scope and scale of this problem. Another effective metric to measure the scope of this issue would be to track the amount of troubles reported within a set number of days of an installation or other order activity. Adelphia recommends this metric as well.

3. Maintenance and Repair Metrics

a. ILEC Caused Outages

Again, going back to the theme of predictability, the issue is that, when an outage is as a result of faulty UNEs or an ILEC action, Adelphia needs to know with certainty when issues will be resolved and service restored, so that it can maintain its credibility with its customers. Relating back to the customer disconnection issue discussed above, one of Adelphia's frustrations is that we are not able to tell our customer with any measure of certainty when the customer's services may be restored. To say that this causes Adelphia to lose credibility with its customer is an understatement. In order to ensure that ILEC caused problems are resolved quickly and with predictable intervals, Adelphia recommends that the following metrics be measured and tracked:

Average duration for ILEC caused outage; and
Average ILEC caused outages for UNE customers as compared to retail customers.

b. General Maintenance Response

Even when outages are not directly attributable to actions by an ILEC, the importance of predictability does not change. Adelphia has had issues with many ILECs regarding responding to trouble tickets and ensuring that the trouble tickets are followed through to completion.[8] Again, these issues of predictability directly affect Adelphia's credibility in the marketplace and its ability to serve its customers. In addition, Adelphia is concerned that the volume of troubles with its UNE orders may be significantly higher than those experienced by ILEC retail customers. As such, the scope and extent of this issue needs to be fully explored. In order to ensure appropriate treatment of trouble tickets and outages, Adelphia recommends that the following metrics be measured and tracked:

Trouble report rate for UNEs in comparison to retail services;
Repeat trouble report rate;
Mean time to restore; and
Missed repair appointments (and other metrics discussed in MR-4 in the NY PAP)

4. Billing Metrics

Finally, once the UNEs are ordered, provisioned and maintained, Adelphia has been experiencing issues when the charges for those UNEs are billed. The biggest issues have surrounded resolving billing errors. Adelphia has found that the ILEC's billing systems may not have billing parameters which meet the ILECs obligations under the Interconnection Agreement, which results in billing errors. Although Adelphia attempts to resolve these disputes by use of the ILEC's billing dispute process, we have continuing issues with the ILECs "losing" the disputes or denying the dispute without any investigation of the issues raised.

While the interconnection agreements with the ILECs define the dispute process, specific metrics for ILEC responses to the billing issues are needed to ensure that the issues are worked through in a timely manner. The simplest way to deal with this issue

[8] Adelphia has found that a number of trouble tickets are closed by the ILEC without ever contacting our staff to determine whether service has been restored to the customer or the trouble resolved. We find that

would be to define a number of days that is reasonable for responses to billing issues and a number of days to correct billing errors and track how closely the ILECs meet that timeframe. This is needed in order to minimize the amount of billing issues that need to go through the entire dispute

E. The FCC should adopt a multi-tiered escalating enforcement methodology for ILEC noncompliance of adopted metrics.

The Commission has sought comment on what enforcement mechanism will best serve to compel compliance with any national measurements and standards adopted by the Commission. Adelphia suggests that the Commission adopt a multi-tiered approach to enforcement by using the full panoply of penalties available to it. As the Commission has correctly noted in the past, more than one method of liability may be necessary "to completely counterbalance . . . incentives to discriminate."[9]

Clearly, larger market share is the ILECs incentive to discriminate and Adelphia's primary concern, which has been echoed repeatedly by other parties, including the Commission, has been that any penalty imposed upon the ILECs may be viewed by them as simply "a cost of doing business" and not serve as sufficient incentive for the ILECs to provide adequate service quality. Not surprisingly, Adelphia's end users have little patience for lengthy provisioning delays and reoccurring service outages and the ILECs continually profit from Adelphia's customer losses with greater market share. In addition, in the past, any credits issued to compensate the CLECs for poor service quality

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we are continually having to re-open trouble tickets, which leads the customers to question Adelphia's ability to maintain and repair the service.

[9] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLata Service in the State of New York*, Memorandum Opinion and Order, CC Docket 99-295, 15 FCC Rcd 3953 (1999) ("*Verizon NY 271 Approval MO &O*").

have done little to mitigate the real harm of market share loss. Consequently, individual penalties imposed in the past have had only modest remedial effect on Adelphia.

Therefore, the real goal of any enforcement mechanism is to make the penalties so compelling that they counteract the economic incentives of increased market share described above. To accomplish this goal, the Commission should establish a multi-tiered escalating enforcement methodology including, first, automatic refunds to CLECs affected by the ILECs failure to maintain adequate performance standards, second, forfeitures pursuant to Section 503 of the Act and finally enforcement actions pursuant to Section 271 (d)(6)(A).

1. Automatic Refunds.

First, carriers should be eligible for refunds on both recurring and non-recurring charges related with the ILECs failure to meet any performance standards. The Commission should implement these automatic refunds or credits on two levels. First, each carrier should be eligible for a refund based on individual instances. For example, where the ILEC fails to meet the required provisioning interval for a specific carrier, the ILEC should be required to credit the harmed carrier for both the non-recurring installation costs and the first month's recurring charge. In addition, a general credit, similar to that implemented by the New York Public Service Commission under the NY PAP should be allotted to all carriers where the ILEC fails to its collective performance standard for a month. [10]

[10]Verizon New York Performance Assurance Plan at pg. 7.

2. Section 503 Penalties.

Second, the Commission should impose forfeitures under Section 503 of the Act.[11] While the automatic refunds described above are an excellent start, they will most likely not serve, on their own, as a sufficient penalty to discourage poor performance. Therefore, the Commission should impose 503 penalties for those ILECs that either fail to meet performance standards for several months or for individual instances where the performance standard is missed by a significant statistical amount. The Commission should adopt the maximum forfeiture allowed under the statute, because, as the Commission itself notes[12], the operating income of the ILECs are immense and smaller forfeitures could be viewed as simply the "cost of doing business."

3. Section 271 Violations.

Third, in the most egregious instances, where the ILEC has repeatedly failed to meet its aggregate performance standards for six months or more, the Commission should not only consider denial of any pending 271 applications, but must consider imposing penalties pursuant to Section 271 (d)(6) of the Act.[13] Adelphia understands the severity of this action and believes that it only be taken for the most recalcitrant. Nevertheless, this may be the only penalty that truly captures the ILECs' attention. Moreover, this territory is not unfamiliar to the Commission, and has been addressed by the Commission previously.[14] In the *Verizon NY 271 Approval MO&O*, the Commission described how it would implement its suspension powers under 271 (d) (6) (A) (iii) by issuing a 'stand-

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[11] 47 U.S.C § 503.

[12] *NPRM*, FCC 01-331 at ¶ 22.

[13] 47 U.S.C. 271(d)(6).

[14] *Verizon NY 271 Approval MO &O*, 15 FCC Rcd at ¶ 446-453.

still order" that would allow the ILEC to continue to provide interLATA service to those customers already receiving it, but would prohibit the further marketing to or enrollment of addition subscribers. [15]

Finally, none of the enforcement mechanisms addressed above should prevent a carrier from bringing its own separate complaint under Section 208 of the Act,[16] nor should a carrier be precluded form bringing its own civil action in a court of competent jurisdiction.

F. The FCC should implement reporting procedures, but not commence workshops at this time.

The Commission has sought comments on the implementation and reporting procedures for the data collected in the performance metrics discussed herein. Specifically, the Commission is interested in (i) what manner data may be collected and audited; (ii) whether workshop meetings will enhance or benefit the implementation of the performance metrics; (iii) whether periodic review of the measurements and sunset provisions are necessary and (iv) in what manner the collected data should be reported.

Adelphia suggests that the Commission require the LECs to report information on the metrics by state and in a monthly fashion. State-by-state measurements will allow the Commission and the CLECs to monitor the data in each state as opposed to LEC-wise. Measurements LEC wide may mask a LEC poor performance in one particular location by being over-ridden with data from a more profitable or pre-271 market. In order for performance metrics to be useful for the CLECs and behavior managing for the LECs, the data must be evaluated state-wide.

[15] *Id.* at ¶ 449.

[16] 47 U.S.C. § 208.

Adelphia further recommends that the Commission develop an internal team to audit the information provided by the LECs in addition to the CLECs comparing such data to their own internal records. In addition, the Commission should devise a manner in which negligently or internationally mis-reported information is detected. To the extent that the same occurs, the LECs should be sanctioned according to the remedies discussed in the enforcement provisions herein.

Adelphia submits that workshop meetings are premature at this time. A prolonged workshop meeting, involving all interested parties, may take considerable amounts of time and delay the necessary implementation of the performance metrics discussed herein. Instead, Adelphia proposes that collection and sorting of the data occur for a period of time and then workshops, as necessitated, be conducted so that the telecommunication community may discuss the data previously collected and whether additional performance metrics are required and, if any, of the current performance metrics are ineffectual. Further, performance metrics may be cancelled in the event that consensus of the workshop participants determine that the metrics has proven unnecessary in that the metrics no longer requires measurements. Adelphia does not support a policy of sun-setting metrics in the event that a particular LEC, or multiple LECs, report high percentage of accuracy over an extended amount of time. Sun-setting metrics in such manner may encourage the LECs to perform in a desirable manner only during the timeframe in which data for the performance metrics are collected in order to fulfill the performance measurements.

III. CONCLUSION

Facilities-based competitors, such as Adelphia, must continue to rely on the ILECs for a certain percent of UNEs that are necessary for provisioning services to the customer. As the ILECs are not only a competitor, but also the wholesale vendor, the ILEC has a powerful incentive to delay and impede provisioning the UNEs and provide reliable, timely maintenance and repair. In Adelphia's experience, the delays and impediments that it has suffered have increased as the number of CLECs has decreased, leading Adelphia to conclude that the ILECS perceive that (1) they have a "golden opportunity" to inhibit or eliminate meaningful competition, and (2) they can act with impunity, as CLECS are insufficiently strong to successfully oppose them and regulatory actions, if any ever occur, are insignificant enough to qualify merely as a "cost of doing business."

Consequently, Adelphia encourages the Commission to act decisively and meaningfully, to adopt national performance measures and standards and associated penalties as soon as possible to provide for an environment in which competition for local exchange service can continue to develop.

Respectfully Submitted,

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